IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4060 OF 2006

Ibrahim Shafi Sheikh .. Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri.S.V.Marwadi, learned counsel for the applicant.

Shri.P.A.Pol, A.P.P. for the State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12TH DECEMBER, 2006

P.C.:

1. The applicant apprehends arrest in connection with C.R.No.388 of 2006 registered by Wanmori police station alleging offences punishable under sections 420, 465, 467, 471 r/w Sec. 34 and Sec.109 of I.P.C. The applicant had approached the Sessions Court for anticipatory bail. The ad-interim anticipatory bail was granted on 24/09/2006 but later on, the application was rejected by the Additional Sessions Judge on 19/10/2006.

2. That is how the present application is preferred.

3. Mr.Marwadi, learned counsel appearing for the applicant invites my attention to the statement, a copy of which is annexed at page 12 of this application. The complainant Poonawala after tracing the title of the property to the Iranis has stated that one Mustaq alias Delhiwala sold the concerned immovable property. The complainant alleges that one Krishna Waman Manmode had by preparing a bogus and false Power of Attorney of the Iranis sold / purported to sell the subject property to the present applicant and one Rahil Malik. Two persons have been produced before the concerned registration authority and the authority was told that these are the persons/original owners. The complainant further states that Krishna Waman Manmode had given a public notice about six to eight months prior to the registration of F.I.R. stating that he is in possession of the subject immovable property. Thereafter, the complainant, his brother Mustaq and one Ashfaq had approached Krishna Waman Manmode and it is alleged that instead of resolving the dispute amicably they threatened him.

4. The submission of Shri.Marwadi is that the applicant had given a complaint to the Additional Collector and other authorities about encroachment on their property. He submits that the F.I.R. is false in as much as the persons are already locked in dispute either in the civil court or before the authorities exercising powers under the Maharashtra Land Revenue Code. In fact, there is a Restraint order passed in favour of the present applicant. There is a suit filed by the complainant and others against the applicant and the said Krishna Waman and others which is still pending.

5. Mr.Marwadi's submission is that the dispute with regard to the right, title and interest in a immovable property is a civil dispute. That apart, according to him, all documents have already been seized and are in possession of the investigating machinery. The trial court has clearly recorded that the I.O. has collected photographs of Rahil Malik, signatures of Iranis from the concerned bank. He submits that the applicant would not abscond. He has firm roots in the society. He is prosecuting his other proceedings. As and when I.O. requires him, the applicant, all details would attend the concerned police station. Similarly, Mr.Marwadi submits

that the grievance made with regard to the details of the witnesses, who have witnessed the transactions between the Iranis and the present applicant would be forwarded within a period of one week from today.

6. The learned A.P.P. had sufficient time to take instructions and to deal with the application. However, beyond submitting that the applicant is not co-operating in the investigation, the application has not been opposed.

7. In my view, considering the nature of the dispute and all documents having already been seized, as far the present applicant is concerned, custodial interrogation is not necessary. More so, in the light of the statement made by Shri.Marwadi before me. The application is opposed on vague grounds and without any details as to how the grant of pre-arrest bail would interfere with the investigations. The case being based on documents, in my view, the applicant deserves pre-arrest bail.

8. Hence, the following order : -

i) In the event of the arrest of the

applicant in connection with C.R.No.308 of 2006 registered with Wanmori police station, the applicant shall be enlarged on bail in the sum of Rs.25,000/- (Rupees Twenty five thousand only) with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant to forthwith surrender his passport, if any, to the I.O. Applicant shall not leave Pune city without prior permission of the trial court. The applicant shall report to the concerned police station once a week on every Monday between 11.00 a.m. and 1.00 p.m. till the charge sheet is filed and thereafter as directed by the trial court till conclusion of trial.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/investigating agency. The applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will ensure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.Dharmadhikari, J.)